

Private foundation self-dealing; government official's use of facility. The use of a private foundation library's meeting room, which is functionally related to the foundation's exempt purpose and is made available at no charge to members of the community-at-large, by a government official (a disqualified person) does not constitute an act of self-dealing.

Advice has been requested whether, under the circumstances described below, the use of a private foundation's meeting room by a government official who is a disqualified person constitutes an act of self-dealing within the meaning of section 4941(d)(1)(C) of the Internal Revenue Code of 1954.

The foundation is exempt from Federal income tax under section 501(c)(3) of the Code, and is a private foundation within the meaning of section 509(a). Its primary activity is the operation of a library open to the general public. In addition to housing a book collection, the library building contains a large public meeting room that is used by various charitable, civic, and fraternal organizations, and other members of the community-at-large at no charge. Moreover, providing the meeting room is functionally related to the foundation's exempt purposes.

One day a month the foundation permits the meeting room to be used by a government official (as defined in section 4946(c)(1) of the Code) to meet with members of the public to discuss issues of mutual interest and concern. The room is made available to the government official on the same basis that it is made available to the general public.

Section 4941(a) of the Code imposes a tax on any act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(C) of the Code defines the term 'self-dealing' to include the furnishing of goods, services or facilities between a private foundation and a disqualified person.

Section 4941(d)(2)(D) of the Code provides that the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public.

Section 53.4941(d)-3(b)(1) of the Foundation Excise Tax Regulations provides that, after May 16, 1973, the exception set forth in section 4941(d)(2)(D) of the Code shall only apply if the goods, services, or facilities are functionally related within the meaning of section 4942(j)(5) to the exercise or performance by a private foundation of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(c)(3).

Generally, by furnishing a meeting room or other facility to a disqualified person, a private foundation would be engaging in an act of self-dealing. However, in this situation, the room is made available to the government official on the same basis that it is made available to other community and civic groups. Further, the use of the foundation's meeting room for communications between the government official and members of the public is functionally related to the foundation's exempt purpose of making the room available for civic and community purposes. Accordingly, since the exception provided by section 4941(d)(2)(D) of the Code is applicable, the use of the meeting room by the government official does not constitute an act of self-dealing within the meaning of section 4941(d)(1)(C).